

§ 15.204

24 CFR Subtitle A (4–1–10 Edition)

(4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material;

(5) Summarize the need for and relevance of the material or testimony sought in the legal proceeding and include a copy of the complaint, if available;

(6) State whether the material or testimony is available from any other source and, if so, state all such other sources;

(7) State why no document[s], or declaration[s] or affidavit[s], could be used in lieu of oral testimony that is being sought;

(8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate;

(9) State why the production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (e.g., not be unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(10) Describe how producing such material or providing such testimony would affect the interests of the United States.

(b) If the Department determines that the requestor has failed to provide the information required by paragraph (a) of this section, or that the information provided is insufficient to consider the demand in accordance with § 15.204, the Department may require that additional information be provided by the requestor before the demand is considered.

(c) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the employee shall immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel.

[73 FR 72205, Nov. 26, 2008]

§ 15.204 Consideration of demands for production of material or provision of testimony.

(a) The Authorized Approving Official shall determine what material is to be produced or what testimony is to be

provided, based upon the following standards:

(1) *Expert or opinion material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201(a) that is of an expert or opinion nature, unless specifically authorized by the Authorized Approving Official for good cause shown.

(2) *Factual material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201(a) that is of a factual nature, unless specifically authorized by the Authorized Approving Official. The Authorized Approving Official shall determine whether any of the following factors are applicable. Such a demand may either be denied, or conditionally granted in accordance with § 15.204(c), if any such factors are applicable:

(i) Producing such material or providing such testimony would violate a statute or regulation;

(ii) Producing such material or providing such testimony would reveal classified, confidential, or privileged material;

(iii) Such material or testimony would be irrelevant to the legal proceeding;

(iv) Such material or testimony could be obtained from any other source;

(v) One or more documents, or a declaration or affidavit, could reasonably be provided in lieu of oral testimony;

(vi) The amount of employees' time necessary to comply with the demand would be unreasonable;

(vii) Production of the material or provision of the testimony would not be required under the rules of procedure governing the legal proceeding for which it is sought (e.g., unduly burdensome or otherwise inappropriate under the relevant rules governing discovery);

(viii) Producing such material or providing such testimony would impede a significant interest of the United States; or

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(ix) The Department has any other legally cognizable objection to the release of such information or testimony in response to a demand.

(b) Once a determination has been made, the requester will be notified of the determination. If the demand is denied, the requestor shall be notified of the reasons for the denial. If the demand is conditionally approved, the requestor shall be notified of the conditions that have been imposed upon the production of the material or provision of the testimony demanded, and the reasons for the conditional approval of the demand.

(c) The Authorized Approving Official may impose conditions or restrictions on the production of any material or provision of any testimony. Such conditions or restrictions may include the following:

(1) A requirement that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access to, and limit any further disclosure of, material or testimony;

(2) A requirement that the requester accept examination of documentary material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or only made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester purchase an extra copy of the transcript of the employee's testimony from the court reporter and provide the Department with a copy at the requester's expense; or

(7) Any other condition or restriction deemed to be in the best interests of the United States, including reimbursement of costs to the Department.

(d) The determination made with respect to the production of material or provision of testimony pursuant to this subpart is within the sole discretion of

the Authorized Approving Official and shall constitute final agency action from which no administrative appeal is available.

[73 FR 72205, Nov. 26, 2008]

§ 15.205 Method of production of material or provision of testimony.

(a) Where the Authorized Approving Official has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204(c).

(b) In any legal proceeding where the Authorized Approving Official has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. The authentication shall be evidence that the documents are true copies of documents in the Department's files and shall be sufficient for the purposes of Rules 803(8) and 902 of the Federal Rules of Evidence and Rule 44(a)(1) of the Federal Rules of Civil Procedure.

(c) If response to a demand is required before the determination from the Authorized Approving Official is received, the U.S. Attorney, Department of Justice Attorney, or such other attorney as may be designated for the purpose will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and will inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination from the Authorized Approving Official.

[73 FR 72206, Nov. 26, 2008]